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BEFORE THE

Federal Communications Commission

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

GEN Docket No. 93-252

In the Matter of

Implementation of Sections 3(n) and
332 of the Communications Act

Regulatory Treatment of Mobile
Services

To: The Commission

REPLY COMMENTS OF PACTEL PAGING

PacTel Paging ("PTP"), by its attorneys, hereby submits its reply comments on the Notice of Proposed Rulemaking (the "Notice") implementing Sections 3(n) and 332 of the Communications Act.^{1/} These reply comments are limited to addressing issues respecting one-way paging services and narrowband Personal Communications Services ("Narrowband PCS").^{2/} The following is respectfully shown:

I. INTRODUCTION

1. The commenters to the Notice represent a broad cross-section of the mobile telecommunications industry,

^{1/} FCC 93-454, released October 8, 1993.

^{2/} PTP is a fully separated subsidiary of PacTel Corporation ("PacTel"). PacTel, which is a leading provider of cellular service and a major proponent of wideband PCS, will be filing separate comments addressing the other wireless service issues raised in the Notice.

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including large and small established operators^{3/}, new mobile radio entrants^{4/}, manufacturers^{5/}, and industry associations^{6/}. Despite the diversity of their interests, the commenters on the regulatory treatment of paging and Narrowband PCS were virtually unanimous in agreeing that: (1) these services are interconnected with the Public Switched Network,^{7/} (2) these services should enjoy a federally protected right of interconnection, (3) the Commission should adopt a service-based approach to regulation, and (4) the ultimate regulatory structure should be governed by principles that will ensure competitive parity among and between like services. PTP addresses each of these common themes in separate sections below.

**II. THE COMMISSION SHOULD CONCLUDE THAT
PAGING AND NARROWBAND PCS SERVICE ARE INTERCONNECTED**

2. The commenters who addressed the point were virtually unanimous in concluding that a service is interconnected with the Public Switched Network even if it uses

^{3/} The large operators include mobile affiliates of the seven Regional Bell Operating Companies, McCaw, Paging Network, Inc. ("PageNet"), and Mobile Telecommunications Corporations ("MTel"). Smaller operators include AllCity Paging, Arch, PageMart, and CellPage.

^{4/} These include companies such as Time Warner and Cox Enterprises.

^{5/} These include companies such as Motorola and E. F. Johnson.

^{6/} These include the Cellular Telecommunications Industry Association ("CTIA"), the National Association of Business and Educational Radio ("NABER") and Telocator.

^{7/} Most of the Commenters also agreed that Public Switched Network should be defined as the Public Switched Telephone Network, See, e.g., Comments of BellSouth, pp. 9-10; McCaw Cellular, pp. 17-18.

store-and-forward technology.^{8/} The commenters generally distinguish Millicom Corporate Digital Communications, Inc.^{9/} as being based on a prior legislative test that did not ultimately turn upon whether the system or the service at issue were interconnected.^{10/} Existing common carrier and private carrier paging services are considered by the commenters to be virtually indistinguishable and, as a result both should be considered to be interconnected with the Public Switched Network.

3. A few commenters agreed with the Commission's observation that paging service are one-way services and "... there is no 'real-time' link through the telephone network between the sender and the receiver of the message."^{11/} These commenters concluded from this fact that the use of store-and-forward technology provides sufficient isolation of the paging

^{8/} See e.g. Comments of Arch Communications Group, Inc. ("Arch") at pp. 7-8, Bell Atlantic Companies ("Bell Atlantic") at pp. 8-10, 15, BellSouth at pp. 7-10, GTE at pp. 5-6, McCaw Cellular Communications, Inc. ("McCaw") at pp. 29-31, MCI at pp. 5-6, Mobile Telecommunications Technologies Corporation ("MTel") at pp. 6-7, Motorola, Inc. at App. A1, National Association of Business and Educational Radio ("NABER") at pp. 8-10, Nextel Communications Inc. ("Nextel") at pp. 16-17, New York Public Service Commission ("NYPSC") at pp. 5-6, PageNet at pp. 5-10, PTP at p.6, Rochester Telephone Corporation ("RochesterTel") at p. 4, Sprint at pp. 5-6, and USTA at pp. 4-5. But see Nynex Corporation at p. 15, PageMart at pp. 5-8, Rockwell International Corporation ("Rockwell") at p. 3 Telephone and Data Systems ("TDS") at pp. 7-8.

^{9/} 65 RR 2d 235 (1983), aff'd sub nom. Telocator Network America, Inc. v. FCC, 761 F. 2d 763 (1985).

^{10/} See e.g. Comments of NABER at p. 9.

^{11/} Notice at ¶ 21. See Comments of TDS at pp. 7-8. See also Comments of PageMart at pp. 5-8, Rockwell at p. 3, and NYNEX at p. 15.

system from the calling party to render it not interconnected.^{12/} PTP disagrees with this line of reasoning.

4. The mere fact that a message waits before being delivered to an end user does not render the service non-interconnected.^{13/} The operative test should be whether the message can be delivered or sent to a user through the Public Switched Network, not whether there is a real-time connection. A definition based upon the nature of the interconnection could lead to arcane distinctions.^{14/} For instance, voice paging systems can be designed with or without store-and-forward capability. Yet, the services are functionally equivalent in the marketplace. PTP opposes any regulatory structure that creates different regulatory treatments for the virtually identical services. Artificial hyper-technical distinctions between equivalent services are what led to the enactment of the regulatory parity provisions in the Omnibus Budget Reconciliation Act of 1993.^{15/} On balance, the Commission should find that paging services, both common carrier and private carrier paging, and Narrowband Personal Communication Services ("Narrowband PCS")

^{12/} See Comments of TDS at p. 7.

^{13/} The amount of time that a page is stored can be manipulated. The Commission would no doubt face circumstances in which the storage period was reduced to a small fraction of a second, making the communication virtually instantaneous.

^{14/} Such arcane distinctions exist today between private carrier paging and common carrier paging, a situation which led in substantial part to the move in Congress toward regulatory parity.

^{15/} Pub. L. No. 103-66, Title VI (1993) ("Budget Act").

are interconnected within the meaning of Section 332 even if store-and-forward technology is used.^{16/}

III. THE COMMISSION SHOULD CONFER A FEDERALLY PROTECTED RIGHT OF INTERCONNECTION

5. Virtually all commenters agree with PTP that paging services and Narrowband PCS services should be accorded a federally protected right of interconnection with the Public Switched Network.^{17/} Without such a right, local telephone companies could be free to deny interconnection to paging and Narrowband PCS providers, or could set differing rates and terms for similar services. The paging industry has pushed for years to ensure a federally protected right of interconnection because interconnection with the Public Switched Network is critical to the paging industry. Interconnection is just as important for other existing and emerging commercial mobile services including SMR services and PCS.

6. The few who oppose a federally protected right of interconnection express concern that granting such a right would preempt state regulation of interconnection arrangements.^{18/} PTP does not believe, however that the states should continue to be able to regulate interconnection. States have in some instances allowed competing services to have different interconnection

^{16/} PTP Comments at ¶ 3.

^{17/} See e.g. Ameritech at p. 10, Bell Atlantic at pp. 39-41, CalPage, Inc. at pp. 4-7, GTE at pp. 21-22, MCI at pp. 7-9, Motorola at pp. 20-21, NABER at p. 17, Nextel at pp. 24-26, PageNet at pp. 25-29, PTP at p. 6, fn 13, U S West at pp. 30-32, and USTA at p. 11. But cf. e.g. California Public Utilities Commission ("CPUC") at pp. 8-11.

^{18/} See CPUC at pp. 8-11.

rates.^{19/} For example, today private carriers do not always enjoy the same interconnection rights at the state level as radio common carriers because of the historical differences in the regulatory treatment of these services.^{20/} PTP does not support deferring interconnection decisions to the individual states where disparities of this nature have been tolerated in the past.^{21/} The Commission should therefore eliminate any such dichotomy and should grant all mobile carriers, both private and commercial mobile services, a federal right of interconnection.^{22/}

^{19/} See e.g. CelPage at pp. 4-7. This is also the case, for instance, in California where until recently the local telephone utilities were free to charge different prices to private carriers than to radio common carriers. Since these carrier competed directly in the market, the private carriers were disadvantaged.

^{20/} See e.g. Comments of PTP at p. 4 fn 8, CelPage at pp. 4-7.

^{21/} Comments of PTP at pp. 4-6.

^{22/} As was noted by PTP in its original comments, according commercial mobile service providers interconnection rights does not and should not lead to an obligation that they provide equal access or that they be forced to make their facilities available to other mobile providers for the termination of calls. These are highly competitive services and mobile networks do not constitute bottleneck facilities. Also, as has been pointed out by other commenters, the diversity of commercial mobile services would make mandatory interconnections with other commercial mobile service providers technically difficult and expensive. See, e.g., Comments of GTE, p. 22.

IV. THE COMMISSION SHOULD ADOPT A SERVICE APPROACH TO REGULATION

7. Many commenters argue that the Commission should adopt a service-based rather than a frequency-based approach to the regulation of mobile services.^{23/} Under this revised approach, the regulatory structure would be dictated by the nature of the service provided rather than by the particular frequencies that are utilized. BellSouth, for instance, argues that the Commission should allow frequencies to be used either for private or commercial mobile services:

A given applicant or licensee would be classified on the basis of its actual service, within the constraints on usage of its chosen frequency. Service classification should not determine frequency eligibility.^{24/}

PTP agrees that such a regulatory approach would serve the public interest by allowing licensees to provide services that best meet market demands. The current regulatory structure unnecessarily constrains the services that can be offered by pigeonholing the offerings into narrow classifications based upon the particular service in which a frequency happened to be first assigned. While the Commission has granted licensees some flexibility to use frequencies for so-called "incidental" services, the scope of permissible offerings under these provisions is not always

^{23/} See e.g. BellSouth at p. 23, McCaw at pp. 12-14, Motorola at p. 12, MTel at p. 11, NYNEX at p. 12, NYPSC at p. 9, Sprint at p. 10, Southwestern Bell Mobile Systems ("SWB") at pp. 14-15, Time Warner Telecommunications ("Time Warner") at pp. 4-5, and TDS at pp. 17-19.

^{24/} See Comments of BellSouth at p. 24.

clear.^{25/} PTP believes that the Commission could eliminate these problems in large measure by abandoning the historical approach in which regulatory status was based upon the particular frequency band in which a carrier was operating.^{26/}

8. PTP disagrees with those who claim that a flexible, service-based regulatory approach would lead to confusion.^{27/} The Commission can and should fashion bright lines between private and commercial mobile services which would be easy to understand and administer.^{28/} The responsibility to determine whether a service is private or commercial mobile service would then fall on the service provider. This flexible approach will present fewer opportunities for new services to find themselves in competition with existing services while operating under different regulatory classifications.

^{25/} For example, Section 22.308 of the radio common carrier rules permits incidental services, but requires that they be "not otherwise inconsistent with other Commission rules, regulations and policies". Since all incidental offerings vary in some respect from traditional offerings, it is not unusual to find particular rule sections applicable to the traditional service that are not fully met by the incidental service.

^{26/} PTP continues to believe that the task of regulating mobile services will be facilitated if there is a subdivision of responsibility for narrowband and wideband services. See PTP Comments, p. 7. Arch supported this concept. Arch Comments, p. 10.

^{27/} See Comments of SWB at p. 14.

^{28/} Avoiding distinctions based upon temporal conditions reflecting current technology and system architecture will help make the lines easier to recognize.

**V. THE COMMISSION SHOULD ADOPT
SEVERAL GUIDING REGULATORY PRINCIPLES**

9. Almost all commenters endorse two important principles in commenting on the regulatory treatment of mobile services: (a) like services would be treated similarly, and (b) all commercial mobile services should be subject to minimal regulation.^{29/}

10. PTP found complete unanimity among the commenters on the principle that like service should be treated similarly. These commenters ranged from established industry operators, such as the regional Bell Operating Companies, cellular companies, and paging companies, to new potential entrants. Most commenters found that the Budget Act required a level playing field between competing services.^{30/} Given the strong outpouring of support, the Commission should adopt such a principle and not use hyper-technical definitions of services which might lead to like service to be treated differently.

11. There was virtual unanimity among the commenters on the principle that there be minimal regulation of non-dominant

^{29/} See e.g. Comments of BellSouth at pp. 18-20, GTE at p. 10, McCaw at pp. 5-11, 15, 28-29, NABER at p. 15, PacTel at ¶¶ 8-14, and USTA at p. 10 (like services treated similarly); and Bell Atlantic at p.20, BellSouth at pp. 26-31, GTE at pp. 14-19, McCaw at pp. 4-8, Motorola at pp. 17-19, MTel at pp. 13, 15-18, NABER at p. 15, Nextel at pp. 20-22, NYNEX at pp. 18-22, PageNet at pp. 14-24, PTP at pp. 9-12, RochesterTel at pp. 6-9, Utilities Telecommunications Council ("UTC") at pp. 18-19, USTA at p. 10 (minimal regulation).

^{30/} See e.g. Comments of BellSouth at pp. 18-20, GTE at pp. 10-11, McCaw at pp. 5-11, 15, 28-29, NABER at p. 15, PacTel at ¶¶ 8-14, and USTA at p. 10.

services (which would include narrowband PCS).^{31/} Most commenters based their view on the fact that extensive competition exists in the industry today and that regulation therefore is unnecessary to protect consumers.^{32/} Given this extensive support, the Commission should extend its regulatory forbearance to all Title II sections of the Communications Act of 1934 that the Budget Act permits, including in particular the elimination of federal tariff requirements.

Respectfully submitted,

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^{31/} See e.g. Comments of BellSouth at pp. 18-20, GTE at p. 10, McCaw at pp. 5-11, 15, 28-29, NABER at p. 15, Pactel at pp. 8-14, and USTA at p. 10 (like services treated similarly); and Bell Atlantic at p. 20, BellSouth at pp. 26-31, GTE at pp. 14-20, McCaw at pp. 4-5, Motorola at pp. 17-19, Mtel at pp. 13-18, NABER at p. 15, Nextel at pp. 20-22, NYNEX at pp. 18-22, PageNet at pp. 14-24, PTP at pp. 11-12, RochesterTel at pp. 6-9, Utilities Telecommunications Council ("UTC") at pp. 18-19, USTA at p. 10. There was some disagreement that perhaps wideband PCS should be subject to regulation. PTP strongly disagrees that different commercial mobile service providers should be regulated differently.

^{32/} See e.g. PageNet at pp. 14-20, PageMart at pp. 14-15.

CERTIFICATE OF SERVICE

I, Tana Christine Maples, hereby certify that I have this 23rd day of November, 1993, caused copies of the foregoing Reply Comments of PacTel Paging to be delivered by hand, courier charges prepaid, to the following:

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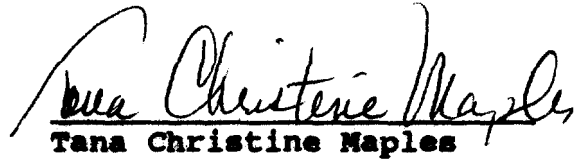
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